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**OCT 30 1978**

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IN THE  
**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1978

**NOS. 78-606 and 78-607**

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY,  
*Petitioner,*

v.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF  
CALIFORNIA, and ROBERT BATINOVICH, VERNON L.  
STURGEON, RICHARD D. GRAVELLE, CLAIRE T.  
DEDRICK, and WILLIAM SYMONS, JR., the members  
of said Public Utilities Commission, ET AL.,  
*Respondents.*

GENERAL TELEPHONE COMPANY OF CALIFORNIA,  
*Petitioner,*

v.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF  
CALIFORNIA, ET AL.,  
*Respondents.*

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**MOTION OF THE SOUTHERN COMPANY FOR LEAVE  
TO FILE A BRIEF *AMICUS CURIAE* IN RESPONSE  
TO PETITIONS NOS. 78-606 AND 78-607, AND BRIEF  
*AMICUS CURIAE* IN SUPPORT OF CERTIORARI**

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**MOTION OF THE SOUTHERN COMPANY FOR LEAVE  
TO FILE A BRIEF *AMICUS CURIAE* IN RESPONSE  
TO PETITIONS NOS. 78-606 AND 78-607**

The Southern Company hereby respectfully moves for leave to file the attached brief *amicus curiae* in support of certiorari in the above case. The consent of The Pacific Telephone and Telegraph Company, General Telephone Company of California, and Communications Workers of America has been obtained. The consent of The Public Utilities Commission of the State of California, the City of

Los Angeles, the City of San Diego, the City and County of San Francisco and Toward Utility Rate Normalization was requested but refused.

The Southern Company is a Delaware corporation, with its principal place of business in Atlanta, Georgia. The Southern Company owns all of the outstanding common stock of Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company, each of which is an operating public utility company. Alabama Power Company and Georgia Power Company each own 50% of the outstanding common stock of Southern Electric Generating Company. The operating affiliates supply electric service in the states of Alabama, Georgia, Florida and Mississippi, respectively, and Southern Electric Generating Company owns generating units at a large electric generating station which supplies power to Alabama Power Company and Georgia Power Company.

The Southern Company is registered as a holding company under the Public Utility Holding Company Act of 1935. The operating affiliates and Southern Electric Generating Company are subject to the jurisdiction of their respective state regulatory commissions, which have broad powers of supervision and regulation over public utilities operating in the respective states, including their rates. The Federal Power Act subjects to regulation the operating affiliates and Southern Electric Generating Company as companies engaged in the transmission or sale at wholesale of electric energy in interstate commerce, including rates.

For federal income tax purposes, the operating affiliates use accelerated depreciation methods authorized by Section 167 of the Internal Revenue Code of 1954, as amended (the "Internal Revenue Code"). The operating affiliates are eligible to use accelerated depreciation methods because they employ a normalization method of accounting for the

federal income taxes deferred through the use of such methods.

The operating affiliates have invested substantial amounts in certain types of capital assets which made them eligible for the investment tax credit provided in Section 38 of the Internal Revenue Code. The operating affiliates are eligible for the investment tax credit because, in accordance with Section 46(f) of the Internal Revenue Code, for financial reporting and ratemaking purposes, they have followed a normalization method of accounting for the federal income taxes saved by the investment tax credit.

The Southern Company has a direct interest in the issues presented to this Court because its operating affiliates are regulated as to their rates for electric service and, in order for the operating affiliates to be eligible for accelerated depreciation methods and investment tax credit for federal income tax purposes, the respective regulatory commissions must agree that the operating affiliates employ for rate-making purposes a normalization method of accounting which meets the requirements of the Internal Revenue Code. Should a state regulatory commission misconstrue the normalization requirements and apply such misconstruction in the ratemaking process, as The Public Utilities Commission of the State of California (the "California Commission") has done in the present case, then the operating affiliate whose rates were so determined would lose the benefits of accelerated depreciation and the investment tax credit, an event which would likely render it unable to discharge its legal duty to serve the public and to finance the payment of the federal income tax liability generated by such loss.

The Southern Company and other public utilities which have availed themselves of these important tax practices have a direct interest in urging this Court to issue the writs

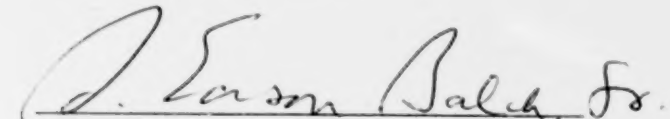
of certiorari requested. The California Commission claims that it has invented a ratemaking method which preserves the tax benefits, yet reduces rates by flowing through a portion of the benefits to current customers. The actions of the California Commission have substantial influence on other ratemaking commissions which are now under great pressure to hold or reduce rates. As a result, should this Court not grant the petitions herein, many ratemaking commissions across this nation may follow the false lead of the California Commission and require public utilities to adopt erroneous methods of accounting for the tax benefits for ratemaking purposes. The Internal Revenue Service would then disallow the tax benefits and savings, and the public utilities would be forced to travel the time consuming route of seeking judicial determinations of the Internal Revenue Service actions. This time lag is no mere nuisance, for during this period such public utilities would amass incredible tax deficiencies and their ability to finance required plants and equipment likely would be impaired in light of their need to finance the tax liabilities. This predictable situation is harmful to The Southern Company and to the national interest, as public utilities may not be able to exist in such an environment and discharge their legal duties to serve the public's demand for utility services.

The Southern Company believes the views it seeks to present to the Court will contribute to the resolution of the issues in this case because the parties will not be able to present adequately the application of the issues (1) to public utility companies other than telephone and telegraph companies, (2) to public utilities which both before and after the enactment of the Tax Reform Act of 1969 used accelerated depreciation methods for federal income tax purposes and normalized the deferred taxes for ratemaking purposes; and (3) to public utilities whose state

regulatory commissions use ratemaking methods different from those employed by the California Commission.

WHEREFORE, The Southern Company respectfully requests this Court to permit it to file the brief *amicus curiae* which is submitted herewith.

Respectfully submitted,



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OF CALIFORNIA, ET AL.,  
*Respondents.*

**BRIEF AMICUS CURIAE FOR  
THE SOUTHERN COMPANY IN  
SUPPORT OF CERTIORARI**

The Southern Company hereby submits its brief in support of the petitions filed in Nos. 78-606 and 78-607 for writ of certiorari to review the judgment of the Supreme Court of the State of California entered on July 13, 1978, upholding the decision of The Public Utilities Commission of the State of California entered on September 13, 1977.



### OPINIONS BELOW

The final judgment of the Supreme Court of the State of California, which is included in the Joint Appendix A, pp. 1A, of The Pacific Telephone and Telegraph Company and General Telephone Company of California (the "Petitioners"), is reported at 21 Cal. 3rd, Official Advance Sheets, No. 21, Minutes p. 3 (1978). The judgment was entered without opinion, one judge dissenting from the Court's refusal to issue a writ of review. The decision of The Public Utilities Commission of the State of California (the "California Commission"), which is included in the Petitioners' Appendix B, pp. 3A, is as yet unreported.

### JURISDICTION

The judgment of the Supreme Court of the State of California was entered July 13, 1978. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

### QUESTIONS PRESENTED FOR REVIEW

Of the questions presented by the Petitioners for review The Southern Company will deal with the following:

1. Did the California Commission violate the provisions of Section 46(f) and Section 167(1) of the Internal Revenue Code of 1954, as amended (the "Internal Revenue Code") and therefore the Supremacy Clause of Article VI of the United States Constitution, by requiring Petitioners to pass on to their customers federal tax benefits of accelerated depreciation and investment tax credits, when Petitioners are forbidden by federal law to receive such tax benefits if they pass them on rather than having them available, as Congress contemplated, for capital investment?

2. Did the California Commission deprive the Petitioners of their property without due process of law in violation of the Fourteenth Amendment by making rates on the arbitrary assumption that Petitioners were eligible for accelerated depreciation and the investment tax credit, when the ratemaking methods used by the California Commission destroyed that eligibility?

### CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. U.S. Const. art. VI.
2. U.S. Const. amend. XIV.
3. The Internal Revenue Code of 1954, as amended, §46(f) [26 U.S.C. §46(f)].
4. The Internal Revenue Code of 1954, as amended, §167(1) [26 U.S.C. §167(1)].

### INTEREST OF THE SOUTHERN COMPANY AND ITS PUBLIC UTILITY SUBSIDIARIES

The Southern Company is a Delaware corporation with its principal place of business in Atlanta, Georgia. The Southern Company owns all of the outstanding common stock of Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company, each of which is an operating public utility company. Alabama Power Company and Georgia Power Company each own 50% of the outstanding common stock of Southern Electric Generating Company. The operating affiliates supply electric service in the states of Alabama, Georgia, Florida and Mississippi, respectively, and Southern Electric Generating Company owns generating units at a large electric generating station which supplies power to Alabama

Power Company and Georgia Power Company. Each operating affiliate is regulated as to its retail rates by its respective state commission and as to its wholesale (interstate) rates by the Federal Energy Regulatory Commission.

The Southern Company has a direct interest in the issues presented to this Court because its operating affiliates are regulated as to their rates for electric service and, in order for the operating affiliates to be eligible for accelerated depreciation and investment tax credit, the respective regulatory commissions must agree that the operating affiliates employ for ratemaking and financial accounting purposes normalization methods of accounting which meet the requirements of the Internal Revenue Code. Should state regulatory commissions misconstrue the normalization requirements of the Internal Revenue Code and apply such misconstruction in the ratemaking process, then the operating affiliates whose rates were so determined would lose the benefits of accelerated depreciation methods and the investment tax credit, an event which would likely render them unable to discharge their legal duties to serve the public and to finance the payment of the federal income tax liability generated by such loss.

#### STATEMENT OF THE CASE

The Petitioners are public utility companies whose rates for service are regulated by the California Commission. Since 1969, for federal income tax purposes, Petitioners have used an accelerated method of accounting for the depreciation of certain capital assets. Section 167(1) of the Internal Revenue Code, as applied to Petitioners, allows them to use an accelerated method of depreciation only if Petitioners follow a normalization method of accounting, whereby for ratemaking and financial reporting purposes Petitioners employ straight line depreciation.

The Petitioners have invested amounts in capital assets which made Petitioners eligible for the investment tax credit against federal income tax allowed by Section 38 of the Internal Revenue Code. The use of the investment tax credit by Petitioners is, by Section 46(f) of the Internal Revenue Code, conditioned on their use of a normalization method of accounting for the investment tax credit benefits for ratemaking and financial reporting purposes.

The California Commission entered a decision requiring Petitioners to employ for ratemaking purposes specified methods of accounting for the tax deferred by the use of accelerated depreciation methods and the tax benefit obtained through the investment tax credit. The Petitioners have been informed by separate rulings of the Internal Revenue Service that the methods the California Commission would require them to use do not meet the normalization requirements of Section 167(1) and Section 46(f) of the Internal Revenue Code, respectively.

The Supreme Court of the State of California affirmed the decision of the California Commission.

The California Commission has granted a stay of its decision pending the petitions for writ of certiorari by Petitioners herein. Should that decision be implemented, the Petitioners are faced with determinations by the Internal Revenue Service that, for federal income tax purposes, they are not eligible for the benefits of accelerated depreciation methods and the investment tax credit. With respect to the Petitioners' federal income tax deductions for depreciation expense, the Internal Revenue Service determinations, if sustained, would result in their being required to employ a straight line method in computing their federal income tax liabilities for all open tax years in which the Petitioners' rates were established (by retroactive effect, refund or otherwise) using the erroneous method of normalization. With



respect to the Petitioners' use of the investment tax credit, the Internal Revenue Service determinations, if sustained, would result in a total loss of the federal income taxes saved in all tax years of the Petitioners not closed to the assessment of a tax deficiency by any law or rule of law.

### ARGUMENT

The decision below raises issues of importance to all public utilities which use accelerated depreciation methods for federal income tax purposes and which normalize the tax deferral for ratemaking and financial purposes, as do the operating affiliates of The Southern Company. The issues are important to all public utilities eligible for the benefits of the investment tax credit. In this brief, The Southern Company will show that resolution of the issues presented in this case is important to the financial stability of the nation's public utilities and their ability to discharge their legal duties to the public they serve, and that electric utility companies as well as other types of public utilities are affected by this decision.

The Southern Company operating affiliates now employ and since 1954 have employed accelerated methods of depreciating capital assets for federal income tax purposes. Throughout this period, the operating affiliates have normalized the effects of the use of accelerated depreciation methods and have used straight line depreciation for ratemaking and financial reporting purposes. Under a normalization method, the difference between the federal income tax generated by accelerated depreciation methods and a straight line method for a given year is added to a deferred tax reserve. The number of dollars in the deferred tax reserve represents the federal income tax expense deferral obtained by using a method of accelerated depreciation. At

the close of The Southern Company's federal income tax year ending December 31, 1977, the amount in its consolidated deferred tax reserve, representing the accumulated tax deferred by the use of accelerated depreciation methods, was \$436,161,000.

The Southern Company operating affiliates have invested amounts in capital assets which made them eligible for the investment tax credit. The investment tax credit is normalized by adding it to a reserve for deferred investment tax credits and, for ratemaking and financial reporting purposes, amortizing such credits to income ratably over the life of the asset which generated the investment tax credit when placed in service. At the close of The Southern Company's federal income tax year ending December 31, 1977, the amount in its consolidated reserve for accumulated deferred investment tax credits was \$220,153,000.

If the regulatory commissions responsible for approving rates of The Southern Company operating affiliates chose to reduce rates by tampering with the approved methods of normalizing investment tax credit and accelerated depreciation methods for ratemaking purposes and, in doing so, misconstrued the provisions of the Internal Revenue Code, as did the California Commission, then The Southern Company would be faced with an additional federal income tax liability equal to the amounts placed in its reserve for accumulated deferred investment tax credits in all years open for assessment of additional federal income tax. At December 31, 1977, this amount was \$191,261,000.

In addition, The Southern Company operating affiliates would lose the use of the cash flow generated by the use of accelerated depreciation methods in all years affected by the rate orders setting rates for service using an erroneous method of normalization of the deferral of federal income tax by accelerated depreciation methods. This loss would

be substantial and immediately would close off this source of funds for vital service improvements.

**(a). The issues presented impact all public utility companies, including electric public utility companies as well as telephone and telegraph public utility companies.**

Due to the substantial and continuous increase in the demand for public utility services, especially in the electric public utility industry, the investment by public utility companies in new plant and equipment in recent years has been enormous. The investment tax credits generated by such investments have resulted in huge federal income tax savings. Likewise, the tax deferrals obtained from the use of accelerated methods of depreciating such new plant and equipment have been very significant. As these savings and deferrals have come in recent years, many public utility companies, electric and otherwise, have very large deferred tax reserves representing tax benefits incurred in federal income tax years still open for the assessment of deficiencies. Should such taxes now become payable, rather than deferred or saved, the public utility companies involved would find it virtually impossible to pay the federal income taxes and perform their legal duty to serve the public.

Public utility companies have a legal duty to provide the public with adequate and efficient service. This duty is absolute. The public utility must render service to anyone within the public utility's service area requesting such service, provided that the customer is willing to pay for such service and to comply with the reasonable rules and regulations prescribed and approved by the appropriate regulatory authorities and provided that the utility has the capacity to render such service.

A lack of capacity to render requested service does not, however, excuse a public utility which has failed to build

and improve facilities required to meet the demand for service. A lack of capacity to render requested service is itself a violation of the legal duty of the utility to project the future demand for its services and to build adequate facilities to serve that demand.

The absolute legal duty of a public utility to serve the public is, in the jurisdictions in which the affiliates of The Southern Company operate, derived both from statute and common law. For example, Alabama Power Company, whose service area is in the State of Alabama, is subject to the legal duty set forth in *Code of Alabama 1975*, Section 37-1-49, as follows:

Every utility shall maintain its plant, facilities and equipment in good operating condition and shall set up and maintain proper reserves for renewals, replacements and reasonable contingencies. Every utility shall render adequate service to the public and shall make such reasonable improvements, extensions and enlargements of its plants, facilities and equipment as may be necessary to meet the growth and demand of the territory which it is under the duty to serve.

The common law duty of a public utility has been expressed by the Supreme Court of Alabama, for example, as follows:

A public utility is obligated to serve all members of the public that it holds itself out to serve, fairly and without discrimination. . .

This duty to serve the public exists independent of statute regulating the manner in which such utilities do business. . . The duty is imposed because they are organized to do a business affected with a public interest and are held out to the public as being willing to serve all of its members. . . *Miller v. Hillview Water Works Project, Inc.*, 273 Ala. 267, 271, 139 So.2d 337 (1962).

Similar statutory provisions and common law concepts govern the affairs of all of The Southern Company operating affiliates and, indeed, all public utilities.

It is important to understand the legal duty a public utility discharges in providing its service because the existence of that duty dictates the actions a public utility must take if it loses the use of accelerated depreciation methods and the investment tax credit.

The investment tax credit results in a federal income tax savings which inures to the benefit of the public utility and its customers. When federal income tax is not due because of the application of the investment tax credit the funds otherwise needed for taxes become available to the public utility to pay for the facilities needed to meet the demand for public utility services. Since the public utility is under an absolute legal duty to provide the service demanded and to project and build the facilities required to meet that demand, if the funds generated by the investment tax credit are not available to assist in paying for the facilities, the utility's only alternative is to attempt to acquire the funds elsewhere. But, while the funds provided by the investment tax credit are free of cost to the utility, the replacement funds obtained elsewhere are expensive.

The public utility must turn to raising funds by issuing securities or by incurring debt. The purchasers of securities issued to supply funds must receive a return on their investment and the lenders of debt must be paid interest. The customers of the public utility ultimately bear the cost of such investment.

The use of accelerated methods of depreciation for federal income tax purposes results in a delay in the time at which the taxpayer must remit tax to the Federal Government. The same amount of tax liability to the Federal

Government will be incurred whether the taxpayer uses an accelerated method of depreciation or a straight line method of depreciation. The public utility and hence its customers will pay the tax in either event; the only difference (but a tremendous one) is whether the public utility will have the use of the funds during the period of the deferral or whether the Federal Government will have the funds during the period of the deferral.

When the public utility is allowed to have the use of such funds, as Congress intended, it uses the funds to construct and improve the facilities demanded by the service requirements — the facilities it has a legal duty to provide. If the utility is denied this source of funds it must turn to other sources of funds and, as discussed above, all of the other sources are expensive. The utility must borrow funds or issue securities, and to do so must pay for the use of the funds obtained. The utility's customers, again, ultimately bear the economic burden of acquiring the use of the funds.

The great value of the use of accelerated methods of depreciation and the investment tax credit to The Southern Company's affiliates and their customers can be seen in a comparison of (1) the amount of funds generated by those items, with (2) the gross property additions of the operating affiliates, and with (3) the total amount of funds acquired from major sources of internally generated funds. For the three year period 1975 through 1977, The Southern Company's consolidated experience was approximately as follows:



(Thousands of Dollars)

YEAR	1975	1976	1977
Funds generated by accumulated deferred income taxes	56,363	52,394	75,155
Funds generated by accumulated deferred investment tax credits	75,530	41,566	74,165
Total funds generated	131,893	93,960	149,320
Gross property additions	992,087	994,839	1,218,404
Percentage of gross property additions generated by accelerated depreciation methods and investment tax credit	13%	9%	12%
Total major sources of internally generated funds (includes deferred taxes, depreciation, investment tax credit, and retained earnings- does not include borrowings and securities issued)	472,024	393,984	554,848
Percentage of major sources of internally generated funds which came from accelerated depreciation methods and investment tax credit	28%	24%	27%

The value of such tax credits and deferred taxes to The Southern Company affiliates and their customers is the total dollar amount of the investment tax credit and the replacement cost of the funds deferred by accelerated methods of

depreciation. These dollars represent a substantial part of The Southern Company's sources of funds and the sources of funds of all public utility companies. The Southern Company is greatly concerned that these important sources of funds be protected. If these sources of funds are lost then, at best, The Southern Company operating affiliates will obtain the required funds elsewhere at a higher cost to their customers; at worst, and very likely, they will *not* be able to replace the lost funds and, as a result, will not be able to construct the facilities needed to meet the demand of the public for electricity.

The Internal Revenue Code provisions and the Treasury Regulations involved in the present case are clear and unambiguous with respect to the accounting methods a taxpayer must employ for ratemaking and financial reporting purposes to normalize the effects of the use of accelerated depreciation methods and the investment tax credit for federal income tax purposes. This Court, by issuing writs of certiorari to the Supreme Court of the State of California and subsequently sustaining the validity of the Treasury Regulations and the conclusions of the Internal Revenue Service interpreting the Internal Revenue Code and Regulations, can set down a durable standard to be followed by regulatory agencies, state courts and public utilities. This standard, once established, should deter additional tampering by regulatory agencies and state courts with the clear principles of normalization set out therein and should remove the cloud of uncertainty and pending financial disaster which hangs over the Petitioners, and which so swiftly could hang over the financial stability and viability of any public utility which has the need to avail itself of such tax practices.

**(b). The issues presented are likewise of critical importance to many public utilities which employed accel-**

**erated depreciation methods prior to the Tax Reform Act of 1969, as well as those which, like the Petitioners, have used accelerated depreciation only since 1969.**

The Petitioners, for federal income tax purposes prior to 1969, employed straight line, rather than accelerated, depreciation methods. As pointed out by the Petitioners, Section 167(1) of the Internal Revenue Code requires that companies such as the Petitioners, which had not before 1969 used accelerated depreciation or formally applied for permission to do so, cannot switch to accelerated depreciation unless they use the normalization method of accounting for ratemaking purposes.

The Southern Company wishes to point out to this Court that public utilities, such as the operating affiliates of The Southern Company, which used accelerated depreciation with normalization prior to 1969 are equally affected by the issues presented as are Petitioners. Section 167(1) of the Internal Revenue Code requires that companies such as The Southern Company operating affiliates that before 1969 had used accelerated depreciation methods for federal income tax purposes and used the normalization method of accounting for ratemaking purposes must continue to use the normalization method of accounting for ratemaking purposes if they are to remain eligible to use accelerated depreciation methods for federal income tax purposes. The only public utilities which are not affected by the depreciation issue presented in this case are those which prior to 1969 used accelerated depreciation methods for federal income tax purposes and for ratemaking purposes flowed through the federal income tax deferral generated by accelerated depreciation. The Southern Company urges this Court to consider the fact that many public utilities used accelerated depreciation prior to the 1969 and used a normalization method of accounting for the tax deferral for

ratemaking and financial accounting purposes. The issues presented in this case therefore are important to The Southern Company and its operating affiliates and many other similarly situated public utilities which did not come lately to the conclusion that accelerated depreciation methods offered benefits to their system, but instead have employed accelerated depreciation with the approval of their regulators for many years.

**(c). The issues presented to this Court affect public utility companies whose rates are established using methods differing substantially from those employed by the California Commission.**

The rates of The Southern Company operating affiliates are approved by state regulatory commissions that do not employ the ratemaking methods used by the California Commission. Indeed, there are differences among the several methods employed by the respective state commissions regulating the operating affiliates of The Southern Company. However, this case will affect The Southern Company operating affiliates and other public utility companies, without regard to the differences in the methods of establishing rates.

The Southern Company desires to point out to this Court that the issues presented in this case do not arise due to a peculiarity in the California Commission's approach to ratemaking which has no application to public utilities in other states and in the business of providing other services. The flaws in the California Commission's approach can be employed in other ratemaking methods and, therefore, this case is important to all such public utility companies.

**(d). The issues presented must be resolved by this Court if the Petitioners' rights under the United States Constitution are to be protected, and The Southern Com-**



**pany operating affiliates and other public utilities may be adversely affected if this Court determines not to hear this case.**

The Petitioners are faced with action by the Internal Revenue Service determining that they are not eligible for the investment tax credit in their tax years open for assessment and disallowing their use of accelerated depreciation methods retroactively in all years in which their rates for service are established with reference to the California Commission's erroneous method of "normalization". Should the California Commission's order become effective, the Internal Revenue Service undoubtedly will make huge deficiency assessments against the Petitioners and the Petitioners should be expected to contest those assessments and seek judicial determinations of the propriety of the "normalization" methods employed by the California Commission.

If the judicial review of the California Commission's "normalization" methods could take place under circumstances which would allow the California Commission to correct its error if error is found, then the California Commission could adjust the Petitioners rates after the judicial review of the Internal Revenue Service determinations and allow them to earn revenues to pay the increased taxes occasioned by the loss of the investment tax credit and to earn sufficient revenues to bear the cost of obtaining the funds needed to replace those lost through reporting federal income tax using straight line depreciation methods rather than accelerated depreciation methods. This is not possible in the present case. The California Commission is not permitted retroactively to adjust the Petitioners' rates if the present order becomes effective.

The Southern Company operating affiliates and other public utilities may be adversely affected by the situation

that has been created by the California Commission and the Supreme Court of the State of California and which will continue if this Court refuses to hear this case. Public utility rates are an issue in many states and regulatory commissions across this nation are under tremendous pressure to devise means of lowering rates. This case is attracting nationwide attention and, coupled with the conspicuous position of the California Commission in this field, is likely to stimulate other regulatory commissions to follow the exploits of the California Commission. The California Commission has held that it has found a way to require a public utility to use accelerated depreciation methods and the investment tax credit and, at the same time, reduce rates by flowing through part of the tax benefit and savings to current customers. Despite the fact that the Internal Revenue Service has ruled that the California Commission's invention does not work, other regulatory commissions may declare the law to be uncertain and seize on the contrived uncertainty as an excuse to justify requiring public utilities to reduce rates without regard to the disastrous consequences that will follow to the public utility and its customers. Any public utility subjected to such abuse would accumulate huge federal income tax deficiencies, and the existence of those deficiencies would impair its ability to finance the potential tax liability and to acquire the funds needed to construct and maintain the facilities it must have to meet its legal duty to serve the public.

Therefore, if the Petitioners are to be afforded an adjudication of their rights under the United States Constitution at a time when those rights can be effectively protected if found to be in danger of violation, then such determination of the Petitioners' rights must come from this Court in response to the issues presented in their petitions. Without such action of this Court, public utility companies across

the nation, including The Southern Company group, will be similarly exposed to regulatory actions creating tremendous liabilities with no available means of meeting them.

WHEREFORE, The Southern Company respectfully suggests that the public interest will be best served if this Honorable Court grants the Petitions for Writ of Certiorari presented herein.

Respectfully submitted,

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